

GloTell® added to anhydrous ammonia by fertilizer dealers may be purchased for resale by those dealers. See 86 Ill. Adm. 130.1405. (This is a GIL.)

July 15, 2005

Dear Xxxxx:

This letter is in response to your letter dated May 18, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

On behalf of the Association, this is a request for clarification regarding an item sold for resale to members, namely GloTell®, a new anhydrous ammonia additive designed to prevent the theft and utilization of anhydrous ammonia in methamphetamine production.

Under 86 IL Administrative Code 130.210(a), it states that *"The sale of tangible personal property to a purchaser for the purpose of resale in any form of a tangible personal property, to the extent not first subjected to a use for which it was purchased, is not subject to the Retailer's Occupation Tax Act."*

Would I be correct then, in telling the sellers of GloTell® that they do not need to charge the fertilizer dealers or farmers sales tax on GloTell®? GloTell® is purchased by the fertilizer dealers or farmers and injected into the anhydrous ammonia nurse tanks or storage tanks. It becomes an integral part of the anhydrous ammonia and cannot be separated out. The anhydrous ammonia is then sold to farmers for use in crop production. In a case where a farmer owns the ammonia storage tank, he would not be re-selling the anhydrous ammonia to himself but would be utilizing it in crop production.

Am I also correct in that so long as the companies selling GloTell® are registered with IDoR and have an active registration number or active resale number, they are allowed to sell GloTell® to fertilizer dealers and farmers without collecting sales tax?

Thank you for your assistance. We just want to make sure we are following all the laws and regulations pertaining to this new product on the market, particularly since it has garnered much attention for its ability to deter ammonia theft. HB 3526 has also passed the legislature and will set up a grant program within the Dept of Ag to help offset the costs of utilizing GloTell®; therefore I expect that interest in this product by our members will increase. If you could reply in writing or by email to me on this issue I would be grateful.

DEPARTMENT'S RESPONSE:

Your letter poses two situations in which GloTell is transferred. The first is the purchase of GloTell by fertilizer dealers, who inject that product into anhydrous ammonia and then sell the resultant anhydrous ammonia product to farmers for use in crop production. We believe that these purchases qualify as purchases made for resale, provided that the proper documentation is provided to GloTell suppliers. See, e.g., 86 Ill. Adm. Code 130.1405.

The second scenario described in your letter involves transactions in which farmers themselves directly purchase GloTell and mix it with the anhydrous ammonia in their storage tanks. The anhydrous ammonia is then used in crop production. In these circumstances, we believe that the GloTell constitutes a farm chemical that is exempt from tax. Farmers should provide their suppliers with proper certification of the farm chemical exemption when making these purchases.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

Jerilynn T. Gorden
Deputy General Counsel – Sales & Excise Taxes

JTG:msk